

These are the tentative rulings for civil law and motion matters set for Tuesday, November 19, 2013, at 8:30 a.m. in the Placer County Superior Court. The tentative ruling will be the court's final ruling unless notice of appearance and request for oral argument are given to all parties and the court by 4:00 p.m. today, Monday, November 18, 2013. Notice of request for oral argument to the court must be made by calling (916) 408-6481. Requests for oral argument made by any other method will not be accepted. Prevailing parties are required to submit orders after hearing to the court within 10 court days of the scheduled hearing date, and after approval as to form by opposing counsel. Court reporters are not provided by the court. Parties may provide a court reporter at their own expense.

EXCEPT AS OTHERWISE NOTED, THESE TENTATIVE RULINGS ARE ISSUED BY COMMISSIONER MICHAEL A. JACQUES AND IF ORAL ARGUMENT IS REQUESTED, ORAL ARGUMENT WILL BE HEARD IN DEPARTMENT 40, LOCATED AT 10820 JUSTICE CENTER DRIVE, ROSEVILLE, CALIFORNIA.

1. M-CV-0051561 Newton, Lori et al. vs. Delta Brands Inc. et al

Plaintiffs' Motion to Transfer Action (Change of Venue) is granted. Pursuant to the stipulation of the parties, trial of this action shall be transferred to San Joaquin County. Code Civ. Proc. § 397(a).

2. M-CV-0059534 Bravo, Isabel vs. McCurdy, Angela, et al

Appearance required on November 19, 2013 at 8:30 a.m. in Department 40.

3. S-CV-0025631 Harrentsian, Antranick vs. Correa, Sarah et al

The Motion to Determine Amount of Accrued and Post-Judgment Interest was continued to December 10, 2013 at 8:30 a.m. in Department 40.

4. S-CV-0027235 Builders Advantage Insurance Serv., Inc. vs. Maxson, David

Appearance required on November 19, 2013 at 8:30 a.m. in Department 40.

5. S-CV-0029581 Leatherman, David, et al vs. D.R. Horton, Inc.-Sacramento

Plaintiffs' Motion for Order Directing Service on LS Fence Company, Inc. by Secretary of State is granted. Plaintiffs may serve the summons and complaint in this action on LS Fence Company, Inc. by personally delivering the same to the Secretary of State of California, or to an assistant or deputy secretary of state.

Plaintiffs' Motion for Order Directing Service on Foremost Superior Marble Co., Inc. by Secretary of State is granted. Plaintiffs may serve the summons and complaint in this action on

Foremost Superior Marble Co., Inc. by personally delivering the same to the Secretary of State of California, or to an assistant or deputy secretary of state.

Plaintiffs' Motion for Order Directing Service on Blue Ribbon Stairs, Inc. by Secretary of State is granted. Plaintiffs may serve the summons and complaint in this action on Blue Ribbon Stairs, Inc. by personally delivering the same to the Secretary of State of California, or to an assistant or deputy secretary of state.

Plaintiffs' Motion for Order Directing Service on NKS Building & Landscaping is denied. It is unclear from plaintiffs' motion that NKS Building & Landscaping is a corporation for which service methods pursuant to Code of Civil Procedure section 416.10 would be available.

Plaintiffs' Motion for Order Directing Service on Toliver Plastering, Inc. is denied. The declaration in support of this motion refers only to NKS Building & Landscaping, and does not refer to Toliver Plastering, Inc.

If oral argument is requested, plaintiffs' request for telephonic appearance is granted. All telephonic appearances must be arranged through CourtCall. See Local Rule 20.8.A.2.

6. S-CV-0029957 Highland Reserve Center, LLC vs. Maximillion Capital, LLC

The Motion to Set Aside Default and Default Judgment was continued to December 3, 2013 at 8:30 a.m. in Department 40.

7. S-CV-0030053 Smith, Scott, et al vs. Centex Real Estate Corp., et al

The Motion to be Relieved as Counsel for Energetic Painting & Drywall, Inc. by Cynthia Shambaugh and the Law Offices of Beverly E. Narayan is granted, effective upon the filing of proof of service of the signed order on Energetic Painting & Drywall, Inc. and all other parties who have appeared in this action.

The Motion to be Relieved as Counsel for Energetic Lath & Plaster, Inc. by Cynthia Shambaugh and the Law Offices of Beverly E. Narayan is granted, effective upon the filing of proof of service of the signed order on Energetic Lath & Plaster, Inc. and all other parties who have appeared in this action.

8. S-CV-0030111 Tyree, Anthony, et al vs. Rescare, Inc.

Plaintiff's Petition to Approve Compromise of Pending Action For Person With a Disability is dropped. This action was dismissed by order of the court on October 1, 2013 when no appearance was made on the Order to Show Cause issued June 28, 2013. Accordingly, the court currently has no jurisdiction to consider the subject petition. In light of the dismissal, plaintiff's November 13, 2013 ex parte application to dispense with personal appearance at the hearing on this petition was granted in error. Accordingly, the November 13, 2013 order granting plaintiff's ex parte application is hereby set aside.

9. S-CV-0030393 Smith, Scott, et al vs. Centex Real Estate Corp., et al

The Motion to be Relieved as Counsel is dropped. No moving papers were filed.

10. S-CV-0031670 Rosta, Daryl, et al vs. Kutzman, Michael T.

This tentative ruling is issued by the Honorable Mark S. Curry. Appearance is required on November 19, 2013 at 8:30 a.m. in Department 32.

11. S-CV-0032965 Hegna, Mary Ann, et al vs. Hughes, William J., et al

Plaintiffs' Application for Publication of Summons is denied. The application references an affidavit of registered process server Matt Patterson, which is not attached. The application itself does not distinguish between the two defendants, and is also devoid of specific details regarding efforts to serve defendants. All other forms of service, including service by mail with acknowledgement of receipt, must be attempted before service by publication may be allowed. Code Civ. Proc. §§ 415.50, 415.30; *Transamerica Title Ins. Co. v. Hendrix* (1995) 24 Cal.App.4th 740, 745. Service by publication requires a "thorough, systematic investigation and inquiry conducted in good faith by the party or his agent or attorney." *Watts v. Crawford* (1995) 10 Cal.4th 743, 749. A search of real property and similar records for areas situated near defendant's last known address is required. *Id.* at 749, n. 5.

12. S-CV-0033351 Murdock, Robert L. vs. Waters, Christy S.

Defendant's request for judicial notice is granted. Defendant's Demurrer to the First Amended Complaint is sustained with leave to amend.

Plaintiff's first cause of action for breach of contract fails to state a valid claim. Plaintiff alleges an agreement between the parties that was partly oral, partly written, and partly implied by conduct. The FAC does not set forth which parts of the agreement were oral, written, or implied. To the extent plaintiff alleges a breach of a purported agreement not to sell the property, and to later grant the property to plaintiff and the parties' son, the FAC does not allege what parts of this agreement were oral, written or implied. Plaintiff references a 1996 amendment to the agreement, but the FAC does not clearly set forth whether the purported amended agreement was oral, written or implied. Plaintiff also references an agreement that the home would be maintained as a rental property for the mutual benefit of the joint venture, and eventually granted back to plaintiff and the parties' son, but the FAC does not clearly set forth whether this purported agreement was oral, written or implied.

Based on the allegations of the FAC, the first cause of action appears to be barred by the statute of frauds. Plaintiff asserts that estoppel should preclude application of the statute of frauds, but only alleges in conclusory fashion that defendant's representations caused him to change his position in detrimental reliance thereon, and that plaintiff would be unjustly enriched if the purported agreement was not enforced. *See Kingston v. Colburn* (1956) 139 Cal.App.2d 623, 625.

Plaintiff concedes that his second cause of action for breach of the implied covenant of good faith and fair dealing is not adequately pled. Accordingly, the demurrer to the second cause of action is sustained with leave to amend.

Plaintiff's third cause of action for promissory estoppel fails to state a valid claim. Plaintiff alleges that he detrimentally relied on defendant's promise to "make mortgage payments on the Residence and keep the payments current." (FAC, ¶ 44.) However, the FAC does not allege that defendant ever failed to make mortgage payments, or keep payments related to the property current. It follows that the FAC does not properly allege that plaintiff was damaged by his reliance on this particular promise.

Plaintiff's fourth cause of action for unjust enrichment fails to state a valid claim. An unjust enrichment claim does not survive the pleading stage where based only on an enforceable contract. *Klein v. Chevron USA, Inc.* (2012) 202 Cal.App.4th 1342, 1388. Plaintiffs are precluded from alleging an unjust enrichment claim where the cause of action does not deny the existence or enforceability of an alleged agreement. *Id.*

Plaintiff's fifth cause of action for declaratory relief fails to state a valid claim. Plaintiff's declaratory relief claim seeks a declaration regarding the parties' rights, duties, obligations and interests with respect to the alleged agreement to transfer property. As noted above, the purported agreement between the parties appears to be barred by the statute of frauds, and plaintiff fails to adequately plead facts supporting the premise that defendant should be estopped from asserting the statute of frauds.

Plaintiff's sixth cause of action for fraud/deceit fails to state a valid claim. Plaintiff fails to plead this cause of action with requisite specificity and fails to plead how, when and where the alleged representations were tendered. *Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.

Plaintiff shall file any amended complaint by no later than December 17, 2013.

13. S-CV-0033525 Zamora, Yvette M. vs. Simmons, Audry Mae, et al

Defendants Eric George Mull and Thunder Valley Casino Resort's Motion to Quash Service of Summons and Complaint was continued to December 17, 2013 at 8:30 a.m. in Department 40.

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